



December 3, 2001

Mr. Hans P. Graff  
Assistant General Counsel  
Houston Independent School District  
3830 Richmond Avenue  
Houston, Texas 77027-5838

OR2001-5610

Dear Mr. Graff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155517.

The Houston Independent School District (the "district") received a request for several categories of information regarding the district's acquisition and use of real property in relation to "Gregory-Lincoln," "Fourth Ward," and "HSPVA." You claim that the following categories of information are excepted from disclosure under sections 552.101 and 552.105 of the Government Code: recommendations for the expansion or closure of Gregory-Lincoln into the Fourth Ward area, environmental studies performed relating to soil and ground support conditions, studies relating to abandoned cemeteries in the Fourth Ward area, and studies on the cost of expanding existing HSPVA site relating to property acquisition and new structures. We have considered the exceptions you claim and reviewed the submitted information.

You have failed to submit information responsive to the request for studies on the cost of expanding the HSPVA site. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Under section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Therefore, you must release this information. Furthermore, we assume that the district has released the remainder of the information responsive to the request that has not been submitted for review. If you have not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000).

We first note that some of the submitted documents fall within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part that:

*the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). The information you have submitted includes four documents entitled Report of Phase I Environmental Site Assessment, EDR Radius Map Report, Report of Phase II Environmental Site Assessment, and Land Use Study. All four of these documents constitute reports, and it is clear that the reports are complete. We therefore find that this information is subject to section 552.022(a)(1), and, as prescribed by section 552.022, this information must be released to the requestor unless it is confidential under other law. Section 552.105 is a discretionary exception to disclosure that protects the interests of governmental bodies and may be waived. As such, this exception does not constitute other law that makes information expressly confidential for purposes of section 552.022. See Open Records Decision Nos. 665 at 2 n.5 (2000), 522 at 4 (1989). However, you argue that the information is excepted under section 552.101 in conjunction with section 551.072 of the Government Code. As this statute may constitute "other law" for purposes of section 552.022, we will address your arguments under this statute for the information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that section 551.072 of the Government Code makes confidential a portion of the submitted information. Section 551.072 provides:

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

Gov't Code § 551.072. Section 551.072 authorizes governmental bodies to hold closed meetings related to property transactions. This provision does not address the confidentiality of records. The fact that a subject was discussed in an executive session does not make information related to that discussion confidential. Open Records Decision Nos. 605 (1992), 485 (1987). Because section 551.072 is not a confidentiality provision, we conclude that the completed reports must be released to the requestor.

Finally, we consider your claim under section 552.105 for the remaining submitted information. Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Under section 552.105, a governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). This office has concluded that information about specific parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. Open Records Decision No. 564 at 2 (1990). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. Open Records Decision No. 564 (1990).

You advise that the district is currently negotiating the purchase of real property to expand the Gregory-Lincoln Education Center site, and that no contracts have been entered into for any of the property at issue. Further, you contend that premature release of the information may hamper the district's negotiating position and harm efforts to evaluate the possibility of the expansion project. After reviewing the submitted information, we conclude that you have demonstrated the applicability of section 552.105 to the information regarding the expansion of the Gregory-Lincoln site. Therefore, you may withhold those documents pursuant to section 552.105. You must release the remaining requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates", written in dark ink.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 155517

Enc. Submitted documents

c: Mr. Anthony Pizzitola  
2527 Gramercy  
Houston, Texas 77030-3107  
(w/o enclosures)